vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2824 OF 2007

Sangrul Education Society & anr. .. Petitioners

V/s.

Prakash Vishnu Zende & Ors. ... Respondents

Mr.N.V. Bandiwadekar for Petitioner
Mr.S.J. Ghogare for Respondent No.1
Mr.Y.D. Mulani, AGP

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 26, 2007**

P.C.:

. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. The petition challenges the order of the School Tribunal dated 29.1.2007. The School Tribunal has allowed the appeal filed by the Respondent teacher and directed the petitioners to reinstate the teacher to the post of Headmaster and to pay him backwages, if they had remained unpaid, besides incidental benefits.

3. The main contention raised in this petition is that the School Tribunal has erred in concluding that the enquiry held against the respondent teacher was not fair and proper and that the Tribunal ought to have considered certain judgments of this Court before

arriving at this conclusion. The Tribunal has held that the enquiry conducted against the respondent-teacher was in breach of the provisions of law and in violation of the principles of natural justice; firstly because it was conducted for more than 120 days which is the limit prescribed in section 37(2)(f) of the MEPS Act; secondly, it has been held that the Secretary of the Petitioner institution who was one of the members of the enquiry committee was prejudiced against the respondent teacher and could not have been one of the members of the enquiry committee as the rules provided for the President to be a member of the committee.

4. On a perusal of the judgment of the School Tribunal, it is obvious that the Secretary was biased in the present case. The Tribunal was therefore right in its conclusion that the Secretary was biased. It is the contention of the petitioner that the President was unwell and, therefore, they had no option but to appoint the Secretary to be part of the enquiry committee. However, there is no provision in the Rules or the Act as to whether somebody other than the President can be appointed as part of the enquiry committee. When a President of an institution is seriously unwell or is physically incapacitated from attending the enquiry for a prolonged period, it may be necessary for the President to nominate some other person to the enquiry

committee.

5. The finding of the Tribunal that the provisions of section 37(2)(f) are mandatory is contrary to what the judgments pointed out by the petitioner in the case of **Shri Govind Bal Mandir Shikshan Sanstha v/s. Suhas Dattatraya Kogekar & Ors.**, **1988 CLR II 1 (HC)** and *Thapar Education Society & Anr. v/s. Shyam Maroti Bhasarkar & Ors.*, **1997(3) Mh.L.J. 709**. Two separate Division benches have taken a view that this provision is directory and not mandatory as the employee is amply protected if the enquiry proceeds for more than 120 days.

6. The order of the Tribunal is, therefore, set aside. It would be open for the Petitioner to hold a fresh enquiry in consonance with the provisions of law and the principles of natural justice and fair play. The Secretary who had been appointed shall not be a part of the Enquiry Committee in view of the provisions of law. The enquiry to be completed as soon as possible and in any event within 120 days. The enquiry must commence within four weeks from today.

7. The submission of the learned Counsel for the Respondent that the respondent be permitted to join duty as Headmaster is refused.

8. Writ Petition is disposed of accordingly.